



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION

S. CORZINE
Governor

LISA P. JACKSON
Commissioner

Environmental Regulation
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June 21, 2006

Jack Strosnider, Director
Office of Nuclear Material Safety and Safeguards
US Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Strosnider:

On May 31, 2006, the New Jersey Department of Environmental Protection (DEP) received a letter from Shieldalloy Metallurgical Corporation (SMC) dated May 24, 2006, requesting that the State of New Jersey either accept or reject the role as the governmental institution responsible for assuring long term control and maintenance of the restricted release portion of the Site.

We assume that this request is being made to comply with Title 10 of the Code of Federal Regulations Part 20.1403(c)(4). This regulation requires that the licensee provide sufficient financial assurance to enable an independent third party, in this case the State of New Jersey, to assume and carry out responsibilities for any necessary control and maintenance of the site. Before we can answer the request from SMC, we want to be certain that we understand the ramifications of our decision. To that end, we have the following questions.

What are the differences between ownership, control, and independent third party oversight? What are the responsibilities of each?

It is our understanding that in order to proceed with an Long Term Control (LTC) license, the licensee has to demonstrate that unrestricted and restricted decommissioning are not obtainable. This can only be demonstrated through an approved decommissioning plan with these options included, reviewed and approved by the NRC. Will the decommissioning plan that SMC submits address these options? As it stands now, the DEP does not know if further reductions in residual radioactivity at the site to meet the unrestricted use criteria in 10 CFR 20.1402 would 1) result in net public or environmental harm, or 2) are not being undertaken because the residual radioactivity levels are as low as reasonably achievable (ALARA). The NRC has not documented that either of these conditions are met because the staff has not completed a technical review of SMC's decommissioning plan.

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If the State were to accept ownership or control, would SMC have to comply with the requirements of the License Termination Rule (Subpart E of 10 CFR 20)? In other words, would the LTC license be denied by the NRC, and would SMC be required to remediate the Site to restricted use standards? If so, would SMC be held to the requirements of 10 CFR 20.1403(e) which specifies dose criteria if institutional controls fail? Would there be a cap allowed under the requirements of the License Termination Rule? If a cap is allowed, will the dose assessment assume that the cap has completely failed? Does the NRC envision a scenario where the 500 mrem/y would be exceeded with or without a cap? If so, would the NRC allow SMC to decommission under the alternate criteria for license termination (10CFR20.1404)? Could the license be terminated without any remediation of the slag pile?

If the answer to any of the questions above would result in the remediation of the slag, will the State be responsible for the cost of this remediation in any way if the State assumes ownership, control, or third party oversight? Can the State request further financial assurance under the required arrangement specified in 10CFR20.1403(c)(4)?

More questions arise considering that Governor Corzine has recently issued a Letter of Intent for New Jersey to become an Agreement State. Assuming that New Jersey agrees to the transfer of the SMC license, will our radiological remediation standards at N.J.A.C. 7:28-12.1 *et seq.* be applicable to the SMC site once they are revised to include source and by-product material? If so, will the DEP be able to require SMC to remediate further once we become an Agreement State? As you know, our dose criterion is 15 mrem/y compared to the NRC's 25 mrem/y, and our "all controls fail" dose criterion is 100 mrem/y, whereas the NRC has an allowance for up to 500 mrem/y.

If New Jersey assumes ownership or control, can we impose our cleanup criteria on SMC before becoming an Agreement State?

When New Jersey becomes an Agreement State, can it be both regulator and owner of the SMC Site? Will the ownership have to be transferred to the local government? What if the local government does not accept this responsibility?

As you know, we had extensive comments on Draft NUREG 1757 Supplement 1, *Updates to Implement the License Termination Rule Analysis*. Before making a determination as to whether to assume ownership, control, or third party oversight, we expect written responses to our comments and the opportunity to review the final document.

Does SMC meet any of the criteria in 10CFR20.1401(b)? In other words, is SMC considered a grandfathered site?

We would appreciate a written response to these questions so that we have sufficient information to consider SMC's request.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Jill Wittenberg for NW".

Nancy Wittenberg,
Assistant Commissioner

c: Dave Smith, SMC
Irene Kropp, Assistant Commissioner, Site Remediation and Waste Management